

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.09.2020

CORAM :

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.O.P.No.14063 of 2020

B.Arun @ Arunachalam

... Petitioner

Vs.

The Inspector of Police
Muthupettai Police Station
Tiruvavarur District
(Crime No.2196 of 2020)

... Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail in Crime No.2196 of 2020 on the file of the respondent police.

For Petitioner : Mr.N.Palanivel

For Respondent : Ms.S.Thankira
Government Advocate (Crl. Side)

O R D E R

(The case has been heard through video conference)

The petitioner, who was arrested and remanded to judicial custody on 08.08.2020 for the offences punishable under **Section 366(A) IPC and Section 6 r/w Section 5(1) of POCSO Act, 2012, in Crime No.2196 of 2020**, on the file of the respondent police, seeks bail.

2. The case of the prosecution as per the defacto complainant one Anandhan is that the petitioner had kidnapped his minor daughter. Based on the complaint, originally the case was registered for the offence 366(A) IPC and during the course of investigation, it came to light that the petitioner had committed penetrative sexual assault on the victim girl, hence, it was altered to Section 6 r/w Section 5(1) of POCSO Act, 2012.

3. The learned counsel appearing for the petitioner would submit that the defacto complainant is his maternal uncle and the victim is his own cousin. He would further submit that the petitioner and the victim girl are having love affair and since the same was reprimanded by her father, the victim stayed in her friend's house but the defacto complainant suspected that the petitioner had taken away his daughter and had given a false complaint. He would further submit that the petitioner was

arrested only on suspicion. He would further submit that the victim has been secured from her friend's house. The learned counsel also submits that the petitioner understands that the statement has been recorded from the victim under 164 Cr.P.C., wherein, she has not stated anything about the petitioner and for no fault of the petitioner, he is in judicial custody from 08.08.2020.

4. The learned Government Advocate (Crl. Side) appearing for the respondent would vehemently oppose stating that the petitioner who is a cousin of the victim (minor girl) kidnapped her and committed penetrative sexual assault on her. She would further submit that the victim girl has been secured and she has not supported the case of the prosecution in her 164 Cr.P.C. statement. She would further submit that the medical examination in respect of the petitioner and the minor girl is completed.

5. Heard the learned counsel on either side. Perused the statement recorded under Section 164 of Cr.P.C. and other materials placed on record.

6. Taking into consideration the above facts and circumstances and the submissions made by the learned Counsels and also considering the fact that the medical examination in respect of the petitioner and the victim is completed and considering the period of incarceration suffered by the petitioner, this Court is inclined to grant bail to the petitioner subject to the following conditions:

(a) Accordingly, the petitioner is ordered to be released on bail on condition to execute his own bond for a sum of Rs.10,000/- (Rupees ten thousand only) before the Superintendent of the concerned prison, in which the petitioner has been confined;

(b) Thereafter, the petitioner shall execute a bond for a sum of **Rs.10,000/- (Rupees Ten Thousand Only)** with two sureties each for a like sum to the satisfaction of the **learned Principal Sessions Judge, Additional Sessions Judge, Fast Track Mahila Court, Tiruvarur, within a period of two weeks from the date of commencement of the Court's normal functioning**, failing which the bail granted by this Court shall stand dismissed automatically;

(c) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

(d) the petitioner on his release from prison, shall report before the respondent police station everyday at 10.30 a.m. for a period of two weeks, thereafter on every Monday at 10.30 a.m. until further orders.

(e) the petitioner shall not commit any offences of similar nature;

(f) the petitioner shall not abscond either during investigation or trial;

(g) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(h) on breach of any of the aforesaid conditions, the learned Judicial Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560];

(i) if the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

7. With the above directions, this Criminal Original Petition is ordered.

-sd/-
24/09/2020

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE PRINCIPAL SESSIONS JUDGE
ADDITIONAL SESSIONS JUDGE,
FAST TRACK MAHILA COURT, THIRUVARUR

2 THE JAILER, DISTRICT PRISON,
NAGAPATTINAM

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
MUTHUPETTAI POLICE STATION,
TIRUVARUR DISTRICT.

CC to M/S. N.PALANIVEL Advocate on payment of necessary
charges

CRL OP.14063/2020

Date :24/09/2020

GKS:25/09/2020